United Nations CTOC/COP/2018/L.6

Conference of the Parties to the United Nations Convention against Transnational Organized Crime

Distr.: Limited
16 October 2018

Original: English

Ninth session
Vienna, 15–19 October 2018
Item 4 of the provisional agenda*
International cooperation, with particular emphasis on extradition, mutual legal assistance and international cooperation for the purpose of confiscation, and the establishment and strengthening of central authorities

Draft resolution submitted by the Chair of the Working Group on International Cooperation

Implementation of the provisions on international cooperation of the United Nations Convention against Transnational Organized Crime

The Conference of the Parties to the United Nations Convention against Transnational Organized Crime,

Noting that international cooperation has a prominent place within the overall context of the United Nations Convention against Transnational Organized Crime[1] and that addressing related issues constitutes a fundamental part of the work carried out by the United Nations Office on Drugs and Crime to assist States parties in the effective implementation of the Convention and the Protocols thereto,[2]

Recalling its decision 2/2 of 19 October 2005, entitled "Implementation of the international cooperation provisions of the United Nations Convention against Transnational Organized Crime", to establish, at its third session, an open-ended working group to hold substantive discussions on practical issues pertaining to extradition, mutual legal assistance and international cooperation for the purpose of confiscation,

Reaffirming its decision 3/2 of 18 October 2006, entitled "Implementation of the provisions on international cooperation in the United Nations Convention against Transnational Organized Crime", under which an open-ended working group on international cooperation was to be a constant element of the Conference of the Parties,

Recalling its decision 4/2 of 17 October 2008 and its resolution 5/8 of 22 October 2010, both entitled "Implementation of the provisions on international cooperation of the United Nations Convention against Transnational Organized Crime", its resolution 6/1 of 19 October 2012, entitled "Ensuring effective

* CTOC/COP/2018/1.

[1] United Nations, *Treaty Series*, vol. 2225, No. 39574.

[2] Ibid., vols. 2237, 2241 and 2326, No. 39574.

V.18-06883 (E)

Please recycle

Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto", and its resolution 7/4 of 10 October 2014, entitled "Implementation of the international cooperation provisions of the United Nations Convention against Transnational Organized Crime",

Also recalling its resolution 8/1 of 21 October 2016, entitled "Enhancing the effectiveness of central authorities in international cooperation in criminal matters to counter transnational organized crime", in which the Conference urged States parties to afford one another the greatest measure of assistance, in accordance with the provisions of the Convention, as well as their domestic laws, and encouraged States parties, consistent with their national legal frameworks, to make the widest possible use of the Convention as a basis for international cooperation,

Welcoming the work of the Working Group on International Cooperation,

1. *Endorses* the recommendations adopted by the Working Group on International Cooperation at its eighth meeting, held from 9 to 13 October 2017, which are contained in annex I to the present resolution;

2. *Also endorses* the recommendations adopted by the Working Group on International Cooperation at its ninth meeting, held from 28 to 31 May 2018, which are contained in annex II to the present resolution;

3. *Further endorses* the recommendations adopted by the Working Group on International Cooperation at its tenth meeting, held on 16 October 2018, which are contained in annex III to the present resolution.

Annex I

Recommendations adopted by the Working Group on International Cooperation at its eighth meeting, held from 9 to 13 October 2017

The Working Group on International Cooperation, at its eighth meeting, held from 9 to 13 October 2017 in conjunction with the tenth meeting of the Working Group of Government Experts on Technical Assistance,[3] adopted the following recommendations for endorsement by the Conference:

(a) States parties to the United Nations Convention against Transnational Organized Crime[1] are encouraged to make use, where appropriate and applicable, of the Convention as a legal basis for transferring criminal proceedings to another State party in relation to the offences covered by the Convention and the Protocols thereto and in accordance with the requirements set forth in article 21 of the Convention;

(b) As part of their preparations for a formal request for assistance and with a view to avoiding additional costs and duplication of work, in particular in the field of transfer of criminal proceedings, including in cases provided for in national legislation and involving joint investigative teams, States parties are encouraged to consider engaging in consultations, before and during the preparation of international cooperation requests, in order to identify needs and to assess the appropriateness of those requests and ways to deal with the practicalities of such cooperation;

(c) In assessing whether a request for the transfer of criminal proceedings should be made, States parties should consider, inter alia, existing bases of criminal jurisdiction, how to best serve the interests of the proper administration of justice, the interests and rights of the persons involved (offenders and victims), the costs to be incurred and national sovereignty issues;

(d) In implementing article 21 of the Convention and concluding bilateral treaties or agreements on the transfer of criminal proceedings, States parties may

[3] See CTOC/COP/WG.2/2017/4–CTOC/COP/WG.3/2017/4.

consider making full use of the Model Treaty on the Transfer of Proceedings in Criminal Matters as a guidance tool;

(e) States parties should make use of existing regional judicial cooperation networks to facilitate discussions on conflicts of criminal jurisdiction and ways to address them;

(f) The Secretariat should assist the Conference in compiling material and information received from States parties on best practices, including practical considerations, in the field of transfer of criminal proceedings;

(g) States parties should continue their efforts to facilitate the active participation of central authorities and law enforcement in the relevant meetings of the Conference and its working groups, in particular the Working Group on International Cooperation;

(h) To further support the exchange of practical expertise among practitioners in the field of international cooperation, the Secretariat, should continue to seek to organize, within its mandate, subject to the availability of resources and with a view to making best use of such resources, practical-oriented expert group meetings either on the margins of the meetings of the Working Group or in conjunction with those of relevant intergovernmental bodies;

(i) The Conference may wish to consider building partnerships with existing regional judicial cooperation networks to enhance coordination mechanisms among them, including through regular meetings in Vienna, subject to the availability of resources and in conjunction with meetings of relevant intergovernmental bodies;

(j) The Conference may wish to consider asking the Secretariat to continue to undertake, subject to the availability of resources, training activities for both criminal justice and law enforcement authorities and private sector entities (service providers), at the national and regional levels, on the gathering and sharing of electronic evidence and on international cooperation relating to such evidence, within the framework of the Convention;

(k) The Conference may wish to consider inviting the Secretariat to assist it and its Working Group on International Cooperation in maintaining communication with the Expert Group to Conduct a Comprehensive Study on Cybercrime, within their respective mandates and keeping the bureaux of both groups informed;

(l) States parties should consider taking legal measures to prevent the use of cryptocurrencies for money-laundering, including in States where cryptocurrencies are not banned, by requiring that companies dealing with cryptocurrencies comply with anti-money-laundering requirements, such as those relating to customer due diligence, establishing the source, destination and purpose of the movement of proceeds of crime and tackling the financing of terrorism;

(m) States parties that have not done so are invited to consider amending their legislation to define clear rules of admissibility of evidence in court, as well as requirements for the conduct of special investigative techniques, for consideration and application in cases of electronic evidence obtained in foreign jurisdictions, and to revise, where appropriate, their existing procedures for mutual legal assistance to adapt them to requests for obtaining and handling electronic evidence;

(n) States parties are invited to build or enhance effective networks for information-sharing for the purpose of obtaining electronic evidence.

Annex II

Recommendations adopted by the Working Group on International Cooperation at its ninth meeting, held from 28 to 31 May 2018

The Working Group on International Cooperation, at its ninth meeting, held from 28 to 31 May 2018 in conjunction with the eleventh meeting of the Working Group of Government Experts on Technical Assistance,[4] formulated the following recommendations:

(a) States parties to the United Nations Convention against Transnational Organized Crime[1] should consider providing to the Secretariat information about their procedural requirements for incoming extradition and mutual legal assistance requests so that the Secretariat may further disseminate that information or make it more widely available, as appropriate and for technical assistance needs;

(b) States parties, in their extradition practice, should give due consideration to article 16, paragraph 5 (b), of the Convention, which governs the conclusion of treaties on extradition, and should consider simplifying evidentiary requirements in extradition proceedings in accordance with paragraph 8 of that article;

(c) States parties are encouraged to consider making more frequent or regular use of informal consultations at different stages of extradition proceedings, mutual legal assistance proceedings and proceedings to transfer sentenced persons, so as to enable the exchange of information on legal requirements or facilitate decision-making in such proceedings, including, where appropriate, prior to and after the refusal of such requests. Such efforts could include steps to inform the requesting countries of potential problems with the requests. With regard to extradition, such efforts could also include informing requesting States of likely defence arguments that could be raised, and giving the requesting State an opportunity to provide additional information or evidence to support an extradition request. The requested State should also inform the requesting State about an adverse court decision in time to allow the requesting State, where appropriate, to provide the information needed for an appeal within the proper time frame;

(d) States parties are encouraged to devote further attention to the need to raise awareness about the utility and added value of the Convention as a legal basis for international cooperation and to enhance the effectiveness of implementation of its pertinent provisions through training and capacity-building;

(e) States parties should consider further promoting the direct transmission of international cooperation requests between central authorities to streamline and expedite international cooperation in criminal matters under the Organized Crime Convention, in accordance with article 18, paragraph 13, of that Convention;

(f) States parties are encouraged to make the best possible use of resources to increase the efficiency and effectiveness of central and/or other competent authorities in dealing with international cooperation requests. In doing so, States parties may wish to consider putting in place or request technical assistance, for the development of case management systems within their central authorities to monitor and better administer the increasing workload occasioned by such requests;

(g) States and other technical assistance providers, including the United Nations Office on Drugs and Crime, are encouraged to incorporate measures to enhance training and technical assistance for central authorities responsible for mutual legal assistance, and competent authorities for extradition to help States parties in their implementation of the Convention;

[4] See CTOC/COP/WG.2/2018/3–CTOC/COP/WG.3/2018/3.

(h) States parties are encouraged to facilitate the active participation of national experts in mutual legal assistance and extradition in forums such as the Working Group on International Cooperation, thus facilitating the exchange of good practices and challenges, promoting direct dialogue between practitioners regarding the implementation of the Convention and maximizing the value of such forums.

Annex III

Recommendations adopted by the Working Group on International Cooperation at its tenth meeting, held on 16 October 2018

The Working Group on International Cooperation, at its tenth meeting, held on 16 October 2018, adopted the following recommendations for endorsement by the Conference:

(a) States parties to the United Nations Convention against Transnational Organized Crime are encouraged to continue their efforts to expedite extradition procedures and simplify evidentiary requirements relating thereto pursuant to article 16, paragraph 8, of the Convention and, in general, to trigger, where necessary, internal reviews for possible reform of their extradition regimes with a view to simplifying extradition procedures where the person sought consents to his or her surrender to the requesting State and trying to minimize opportunities for delays in the extradition process;

(b) States are encouraged to build their extradition relations on mutual trust and confidence and to strengthen, for that purpose, communication and coordination, including by enhancing the practice of formal and informal consultations at various stages of extradition proceedings, in particular with regard to the exchange of information on legal requirements and the identity of the person sought;

(c) States are encouraged, if they have not done so, to consider putting in place inter-agency coordination mechanisms to discuss practical aspects pertaining to the execution of incoming requests for extradition, as well as ways and means to expedite the execution of such requests;

(d) States are encouraged to foster and further promote the cooperation of their central authorities, including in extradition cases, through networking and regular contacts;

(e) States parties should continue their efforts to facilitate the active participation of central authorities in the relevant meetings of the Conference and its working groups, in particular the Working Group on International Cooperation;

(f) Where necessary, States should benefit from the regular exchange of information about and best practices in the provision and enforcement of assurances and guarantees in extradition proceedings regarding the treatment of the person sought in the requesting State, including though the exchange of pertinent jurisprudence in the field of human rights in similar cases;

(g) When refusal of an extradition request is a possible outcome, States are encouraged, in specific circumstances and for humanitarian reasons that are present at the time of the decision, to consider the option of postponing the surrender of the person sought instead;

(h) Subject to the availability of extrabudgetary resources, the Secretariat should conduct research with a view to preparing a discussion paper that would map an overview of practical considerations and challenges that authorities encounter, as well as lessons they have learned and good practices they have identified, in reconciling the need for observing and protecting the human rights of the person sought with the effectiveness of extradition proceedings, and in addressing efficiently

the interplay between, on one hand, refugee and asylum proceedings and, on the other, extradition proceedings;

(i) States parties are encouraged to continue making use, where appropriate and applicable, of the Convention as a legal basis for international cooperation in criminal matters, including extradition;

(j) States parties are encouraged to provide the United Nations Office on Drugs and Crime with updated legal frameworks and concrete cases in which the Convention has been used as legal basis for international cooperation with a view to expanding the information already available in the knowledge management portal known as Sharing Electronic Resources and Laws on Crime (SHERLOC) and, subject to the availability of extrabudgetary resources, preparing a digest of cases that incorporates accumulated knowledge on this issue and has the potential of being updated regularly.